

Antiwar Activists Challenge Army's Domestic Spying Apparatus in Ninth Circuit

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With the militarization of police on the rise, the necessarily stark line between the military and domestic law enforcement is becoming increasingly blurred. And it's not entirely surprising—given ongoing revelations around mass surveillance—that the



military would abuse its authority and spy on activists in order to undermine their political objectives. But, it has happened and likely still does.

What's hopeful in this otherwise dystopian reality is the tenacity of seven antiwar activists and their dedicated attorneys who are fighting back and challenging the politically-motivated spying apparatus built by the Army and domestic law enforcement, which plaintiffs in a widely-watched federal lawsuit argue is both illegal and unconstitutional.

The group of antiwar activists is now headed to the US Court of Appeals for the Ninth Circuit in Seattle this Friday, April 7th at 9:30am to appeal their case.

The lawsuit Panagacos v. Towery was filed in 2010, after activists discovered the previous year from public records requests that Army intelligence analyst John J. Towery (under the alias “John Jacob”) had infiltrated and spied on them over a 3-year period beginning in 2006.

Plaintiffs are now appealing the case after it was summarily dismissed in June 2014 by US District Court Judge Ronald B. Leighton with virtually no explanation and after admitting he had failed to review all of the evidence.

In addition to alleging violations of plaintiffs’ First, Fourth, Fifth and Fourteenth Amendment rights, the *Panagacos* lawsuit accuses the Army of violating a little-known but important law from 1878 called the Posse Comitatus Act, which forbids the military from enforcing civilian law inside the United States. This case arguably exposes the most blatant violations of Posse Comitatus in several decades.

Named defendants in the *Panagacos* case include Towery, his Army supervisor Thomas Rudd, the City of Olympia and its police department, and the City of Tacoma and its police department. The Army and other military divisions were previously dismissed from the lawsuit, but plaintiffs are calling on the Ninth Circuit to add them back in.

Towery ingratiates himself into the activist community

Towery called himself an anarchist and befriended a number of activists living in Olympia. One of the plaintiffs, Brendan Maslauskas Dunn, said Towery “was actually a close friend of mine,” making the realization of Towery’s actions that much more difficult to reconcile.

Maslauskas Dunn was active in Port Militarization Resistance (PMR), an antiwar group that formed in 2006 and whose members used nonviolent civil disobedience to block military weapons and equipment like Stryker vehicles from being shipped to and from Iraq. They were “end[ing] their participation in the illegal occupation of Iraq by stopping the military use of the Port of Olympia.”

But, while PMR was a priority for the Army and a focus of Towery’s intelligence gathering, the group wasn’t at the center of the public records request that would ultimately expose Towery’s identity. Maslauskas Dunn made the records request on behalf a group he was involved in—the Industrial Workers of the World (IWW).

Activists would soon discover that Towery was spying on several political groups, including PMR, IWW, Students for a Democratic Society (SDS), and Iraq Veterans Against the War.

While emphasizing counter-terrorism, fusion centers spy on political dissidents

Towery told activists he worked as a civilian employee for the Army and offered his observations and inside knowledge of

operations at Fort Lewis military base, also known as Joint Base Lewis-McChord (JBLM), information clearly helpful to protesters wanting to know when military shipments would be transported.

Towery was trusted enough that he eventually became the administrator of multiple activist-based listservs. He and Maslauskas Dunn “gave workshops together on grassroots direct democracy and anarchist struggle.”

What Maslauskas Dunn wasn't aware of at the time, was that Towery took information he gathered and fed it to his superiors at the Army as if Maslauskas Dunn and his fellow activists were a foreign threat.

But, Towery and his superiors didn't stop there. The Army also fed so-called “intelligence” to the Washington State Fusion Center (WSFC), formerly known as the Washington Joint Analytical Center, which is housed in the Abraham Lincoln Building on Third Avenue in Seattle, one floor below the FBI's Seattle Field Office.

According to the American Civil Liberties Union (ACLU), there are at least 77 fusion centers in operation across the country today, but in the mid-2000s when PMR was formed they were a relatively new phenomenon.

Fusion centers are communications or intelligence hubs of local, state and federal law enforcement agencies as well as divisions of the military and private companies. They started out ostensibly focused on counter-terrorism, along the lines of the Joint Terrorism Task Forces led by the Federal Bureau of Investigation (FBI), but fusion centers quickly adopted an

all-hazards approach where participants secretly share vast amounts of information with ambiguous lines of authority and, for the most part, are unaccountable to the public.

Normally, fusion centers keep a tight lid on their operations and who their participants are by limiting disclosures and public oversight. But, the *Panagacos* lawsuit gives us a unique opportunity to look at the inner workings of Washington State's fusion center and how extensive military and domestic law enforcement spying actually is.

Indeed, the influence of the military on fusion center activity is worthy of concern and scrutiny, especially if it appears to threaten democratic principles which, for more than a hundred years, have drawn a deliberate line between military and civilian law enforcement. Yet, the secrecy and lack of transparency under which these fusion centers operate make it difficult, if not impossible, for the public to adequately oversee or keep in check their actions.

Army-led intelligence network aimed at disrupting political movements

“[Towery] tipped off the Army about some of the same demonstrations he was helping to coordinate,” reported Seattle Weekly in 2010, “and at times gave local police play-by-play details on demonstrators’ movements.”

But, Towery and his Army superiors weren't just spying on antiwar activists. The military repeatedly took the added step of disrupting the political movements they perceived, rightly or wrongly, as a threat to business-as-usual.

On multiple occasions, PMR activists were pulled over on their way to protests and arrested on bogus charges that were later dismissed. Activists engaged in symbolic civil disobedience were violently attacked by police and arrested en masse. Information obtained surreptitiously by the Army was used to disrupt a criminal prosecution then under way in state court. The Army even distributed dossiers on some of the plaintiffs to law enforcement, characterizing the activists as terrorist threats.

The *Panagacos* complaint states that a list of license plates was kept of individuals identified as key organizers who “were followed, stopped, cited, arrested, and otherwise harassed.”

PMR activist Phil Chinn, a student at Olympia’s Evergreen State College in 2007, was driving with friends to an antiwar protest at the Port of Grays Harbor in Aberdeen in May of that year. Unbeknownst to Chinn and his friends at the time, the Washington State Patrol had issued an ‘attempt-to-locate’ code for Chinn’s license plate with a message to apprehend “three known anarchists” in a green Ford Taurus and to let the Aberdeen police know.

Trooper Ben Blankenship of the Washington State Patrol pulled Chinn over for going 53 mph in a 55 mph zone, but then decided to charge him with a DUI.

While he was in the trooper’s cruiser, Chinn noticed a computer printout with a picture of his parents’ car he’d been driving the day before. It was at that point Chinn realized he

was part of more than just a routine traffic stop and the cops had been looking for him in either car.

Chinn's charges were eventually dismissed and in 2009 he sued the state patrol, City of Aberdeen, and Grays Harbor County for harassment and false arrest. Over the objections of the US Attorney's Office in Seattle, which wasn't even party to the lawsuit, federal judge Robert Bryan ordered police to turn over the intelligence that led to Chinn's arrest. To avoid disclosure of what the federal government called "Sensitive Security Information," the case was quickly settled for more than \$400,000.

During a couple of weeks of protests at the Port of Olympia in November 2007, activists again used nonviolent civil disobedience to blockade the transport of military equipment returning from Iraq.

On two separate days, activists peacefully held the port for several hours and were met with indiscriminate police violence. "The police were out of control," PMR activist Phan Nguyen told Democracy Now! "[T]hey used all sorts of weapons against us," including "batons, bean bag rounds, pepper spray, pepper ball rounds, tear gas, concussion grenades, and stinger balls."

Nguyen also said that police attacked bystanders, injuring at least 150 people and arresting more than 60, including *Panagacos* lead plaintiff Julianne Panagacos, and fellow plaintiffs Julia Garfield, Chris Grande, and Andrea Robbins. According to the *Panagacos* lawsuit, plaintiffs were subjected during these demonstrations to excessive use of force by the

Olympia Police Department and endured “physical injury, pain and suffering, apprehension, and severe emotional distress.”

In May 2009, just a couple of months before Towery’s identity became public, the 504th Military Police Battalion arrested protesters on civilian property in the City of Lakewood, Washington after receiving a briefing from Towery’s Army superiors and with no apparent concern for the Posse Comitatus Act.

In violation of the sacrosanct attorney-client privilege, the Army admitted to eavesdropping on a confidential listserv of defendants and their legal counsel in 2007. Eavesdropping by itself is considered a constitutional violation, but *Panagacos* plaintiffs allege that Towery also took sensitive information from the listserv vital to a pending criminal trial and passed it on to fusion center officials who then transmitted it to local prosecutors, forcing a mistrial in a case the defense was winning handily. The case was later dismissed for prosecutorial misconduct.

Antiwar activists profiled as terrorists

In October 2007, Towery participated in the 14th annual Terrorism Conference held in Spokane and hosted by the Organized Crime Intelligence Unit of the Washington State Patrol. Notably, “domestic terrorist” dossiers were produced on several antiwar activists including at least two *Panagacos* plaintiffs—Brendan Maslauskas Dunn and Jeffrey Berryhill.

Complete with mug shots, political affiliations, as well as inaccurate and misleading criminal histories, the dossiers

were disseminated to conference participants and others who were part of the Army's growing intelligence-sharing network.

Pierce County Sheriff's Det. Chris Adamson, director of the WSFC's "Intelligence Group 5" confirmed in a March 2014 deposition that he used Towery's intelligence to place activists on a domestic terrorist list. Adamson had no trouble equating nonviolent civil disobedience blockades with domestic terrorism "if they were trying to obstruct governmental process" or if "they're tying up law enforcement resources."

Maslauskas Dunn, who remained on the list until just last year, countered Adamson's reasoning. "The fact that a peaceful activist such as myself is on this domestic terrorist list should be cause for concern for other people in the US," said Maslauskas Dunn in 2013. The revelations led the plaintiffs to amend their lawsuit.

Long history of abusive spying by the military

The kind of invasive spying and disruptive tactics used to undermine political activity found in the *Panagacos* case is not unfamiliar to the Army. Before details were revealed of the FBI's now well-known counterintelligence program (COINTELPRO), former Army intelligence officer Christopher Pyle wrote an article in 1970 about the Army's vast spying operations on the civilian population, which won a Polk award. As a result of the exposure, the Army eventually shut down its domestic surveillance program.

In addition to forcing an (at least momentary) end to abusive Army intelligence practices, Pyle went on to work for the Church Committee which investigated the FBI's illegal efforts to spy on, disrupt and neutralize political dissidents from 1956-1971. The Church Committee was responsible for a variety of Congressional reforms in the mid-1970s such as establishing the Foreign Intelligence Surveillance Act (FISA) court, which is still used today ostensibly to protect Americans from these same abuses.

Pyle, who is now a professor of constitutional law, provided an expert witness report in the *Panagacos* case, which points to "a long and well-documented pattern of military surveillance of anti-war groups like the Plaintiffs who were then subjected to arrest by civilian police in connection with their political, not criminal, activity." Pyle called Towery's infiltration "precisely the sort of work that Army intelligence...promised Congress it would never do again."

Pyle accused Towery and his superiors of "exceed[ing] their legal authority, which they should have known from Army regulations adopted during the Watergate era, when disclosures of similar spying on civilians forced the Army to abolish the U.S. Army Intelligence Command and to destroy all its records on civilian politics."

Larry Hildes, lead attorney for the plaintiffs and also a member of the National Lawyers Guild, recently said, "The *Panagacos* lawsuit amply illustrates that political spying reforms established in the 1970s are impotent in the face of the sprawling security apparatus we've since developed in the US."

Expanding the military spying apparatus

Apparently unsatisfied with its sweeping ability to spy on activists and interfere with their political objectives, the Army sought to expand its intelligence coordination with local, state and federal law enforcement beyond the Washington State Fusion Center.

Olympia activist Paul French obtained records in early 2014 that revealed Towery was at the helm of a broader spying program than originally contemplated. After the 2007 terrorism conference in Spokane, Towery quickly established an intelligence-sharing network that included the FBI, and police departments in Los Angeles, Portland, Eugene, Everett, and Spokane.

“I thought it would be a good idea to develop a leftist/anarchist mini-group for intel sharing and distro,” wrote the Army analyst in a November 2007 email. Towery referenced books, “zines and pamphlets,” and a “comprehensive web list” as source material, but cautioned the officials on file sharing “because it might tip off groups that we are studying their techniques, tactics and procedures.”

Rick Anderson from *Seattle Weekly* reported in 2010 that Thomas Glapion, Chief of Investigations and Intelligence at New Jersey’s McGuire Air Force Base, emailed an Olympia police officer in 2008 to say:

“You are now part of my Intel network. I’m still looking at possible protests by the PMR SDS MDS and other left wing anti war groups so any Intel you have would be appreciated...In return if you need anything from the Armed Forces I will try to help you as well.”

The Army investigates itself

In order to make it look like the military could hold itself accountable, the Army completed an internal investigation in 2009, and then reopened it for a first and second supplemental investigation in 2010 “to determine whether military legal advisers were given complete and accurate information about the protest group’s infiltration,” according to The Olympian.

Predictably, the Army found no unlawful activity on the part of Towery or other Army personnel. It’s possible the Army drew this conclusion because Towery misled investigators under oath by telling them he wasn’t being paid for his surveillance efforts. But, it’s far more likely the Army knew exactly what Towery and his superiors were doing and simply wanted to sweep it under the rug.

The Army never released the investigations to the public and they were only obtained years later as a result of *Panagacos* disclosures.

Towery continued to deny he was working for the Army while spying on political activists, but an email from Rudd obtained through discovery in the *Panagacos* case showed that Towery was getting paid overtime by the Army to attend activist meetings in 2008. Records obtained by Paul French also contradicted Towery’s earlier claims, forcing him and his superiors to finally admit it.

In a March 2014 deposition in the *Panagacos* case, Towery admitted for the first time he was routinely paid by the Army to gather intelligence and disseminate it to his military superiors as well as to the fusion center. Remarkably, Towery also said the

term “anarchist” was used as “a label of convenience,” to target “people and their actions and their threats to the military.”

Towery’s supervisor at JBLM, Force Protection Division Chief Thomas Rudd confirmed in an April 2014 deposition that Towery was working for the Army when he spied on members of PMR and other groups, but Rudd evaded questions about why he failed to report Towery’s status to Army investigators in 2009. Rudd also admitted to “very limited” training on Posse Comitatus.

One of Rudd’s supervisors, Col. Lois Beard, then-Rear Echelon Commander of 42nd MP division, was also deposed in March 2014. Col. Beard defended Army spying efforts on a Peace Works conference at Evergreen College in Olympia and justified sharing that intelligence based on “anti-military sentiment in the community.” Col. Beard further explained that the operation provided “general situational awareness” and “a little background information” in case there was “a protest or a demonstration.”

And in case there was any doubt the military was aware of Towery’s efforts, in 2007 Lt. General Charles H. Jacoby Jr. awarded Towery with a “Certificate of Achievement” for his “exceptionally meritorious achievement while providing crucial police intelligence during the Third Striker Brigade redeployment from the Port of Olympia to Fort Lewis.”

“Mr. Towery demonstrated outstanding professionalism and devotion to duty by rendering up to the minute reports that clearly stated the intentions of anti-war protesters at the Port of Olympia. This vital information was relayed to the local law enforcement agencies which assisted them in ensuring that the convoys were conducted safely and without injury to soldiers or damage to military equipment.”

Although Rudd said he was reprimanded after the 2009 Army investigation, he admitted in his 2014 deposition that he continued to anonymously spy on email listservs of political activists in order to assess their perceived threat to Army operations. Email communication between Rudd and local law enforcement illustrates how the Army was obsessed with tracking anarchists until at least 2010, long after Towery's identity was exposed.

Most recently, the Defense Department changed its policy to prohibit intelligence officials from engaging in the same type of questionable surveillance the Army has admitted to conducting for years against antiwar groups and other political organizations referenced in the *Panagacos* litigation.

In August, cryptome.org obtained the latest manual for "Procedures Governing the Conduct of DoD Intelligence Activities," which has a new section 3.10(e)(2) prohibiting the surveillance "for the purpose of collecting information on the domestic activities of U.S. persons." Under another new section 3.10(b)(3), the manual also prohibits military intelligence officials from anonymous spying on email listservs.

Hildes points to the policy change as validation that, "the military knew all along what it was doing was wrong and is now trying to cover its tracks."

Still trying to hold the Army accountable

Shortly after the revealing depositions, the defense moved for summary judgment and in June 2014 the case was dismissed. A year later, in July 2015, plaintiffs filed their appeal to the Ninth Circuit, but were forced to do so under seal. Tacitly conceding

the importance of the *Panagacos* case and the potential for blowback, the Army opposed disclosure of documentary evidence thereby hiding relevant information from the public.

“At a time when abusive government surveillance is rampant,” said Hildes, “being able to scrutinize the ways in which the Army has abused its role and authority to disrupt First Amendment-protected activity is very much in the public interest and should not be hidden from public view.”

Discovery disclosures not under seal illustrate how concerned the Army is with “negative media coverage” and the lengths it’s prepared to go to chill free speech. In two exceptional emails from 2009, the Army details its efforts to chill dissent by “deflat[ing] the motivation to protest,” and by trying to predict what activists will do to “preclude giving them opportunities to embarrass us or make news of a confrontation.”

This will be the second time the Ninth Circuit has heard the *Panagacos* case. In 2012, the appeals court rejected the Judge Leighton’s earlier dismissal of the case, instead finding that allegations of First and Fourth Amendment violations were “plausible,” and sending it back to Leighton for trial.

And a year ago, in a show of support for holding the Army and law enforcement accountable for spying on political activists, several grassroots and legal organizations filed an amicus or “friend of the court” brief in January 2016.

The brief, which was filed jointly by the National Lawyers Guild, A.J. Muste Institute, Campaign to Bring Mumia Home, Granny Peace Brigade, Iraq Veterans Against the War, Time’s Up!, and War Resisters League stated that, “the accumulative misconduct

in this case reflects the national pattern and practices of unconstitutional ‘pre-emptive’ law enforcement,” and “Permitting the Army, in cooperation with local fusion centers, to monitor, infiltrate and disrupt a local anti-war organization represents a clear violation of the Posse Comitatus Act, and the principles of a democratic society.”

The *Panagacos* plaintiffs seek to underscore how their case represents real-life examples of the dangers revealed by Edward Snowden and that the tangible social consequences of spying on political dissidents are amplified by technological advancements in surveillance and information-gathering.

More than seven years after the lawsuit was filed, and even longer since PMR activists exposed Towery’s identity and the spying program he was part of, plaintiffs are still pursuing justice in the courts.

“I think that there is a huge potential for the case to set precedent,” declared Julianne Panagacos. “This could have a big impact on how the U.S. military and police are able to work together,” continued Panagacos. “I am hopeful we will win.”

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